

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA**

CALEB A. DIAL,

Plaintiff,

vs.

**CASE NO. 2022-cv-00316**

KEITH HIGGINBOTHAM

(Individually and in his capacity as a Police  
Officer for the Milton Police Department and  
the City of Milton, West Virginia)

and

MILTON POLICE DEPARTMENT

(a West Virginia Corporation political  
subdivision)

and

CITY OF MILTON, WEST VIRGINIA

(a West Virginia municipality)

and

JOHN DOE 1-5

Defendants.

**DEFENDANTS' MOTION TO DISMISS**

COMES NOW, the Defendants, Keith Higginbotham, Milton Police Department, and City of Milton, West Virginia, by and through their counsel, John W. Burns, Esquire, and Gordon Rees Scully Mansukhani, LLP and pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure, hereby moves that this Honorable Court dismiss Plaintiff's claims. In support of this Motion, Defendants rely upon their Memorandum of Law filed contemporaneously herewith.

WHEREFORE, for the reasons set forth fully in their Memorandum of Law in support of its Motion to Dismiss and pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure,

Defendants respectfully move this Honorable Court to enter an Order granting Defendants' Motion to Dismiss, dismiss Plaintiff's claims, and grant such other relief as this court deems just and proper.

Respectfully submitted,

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By: /s/ John W. Burns

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*Counsel for Defendants, Keith Higginbotham,  
Milton Police Department, and City of Milton,  
West Virginia*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that, on September 6, 2022 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and served it upon the following counsel of record for all interested parties via the Court's CM/ECF system:

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